

# AI's Effects on the Legal Profession

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# Outline (Goals)

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- Examine some (but certainly not all) effects that AI has already had – and will likely have in the future - on lawyers & others
- Issues / problems already encountered (and other to be expected)
- Challenges and concerns (for lawyers and non-lawyers)
- Examine the mix of **GOOD** and **BAD** news – and uncertainties

# Example of Recent "Events"

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- AI has passed the MPRE
- Lawyers need to study to pass this ethics part of the Bar Exam
- We'll get back to this

# Structure and Genesis of Presentation

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- Based on a recent AZ Bar CLE presentation
- Focused partially on ethical rules (Rules of Professional Responsibility)
- This is how lawyers are (self) regulated
- Useful way of looking at the issues

# Ethics the Lawyers' Rules of the Road

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- AZ Supreme Court Rule 42 provides our Rules of Professional Responsibility (“ethics rules”)
- Every state has something like this, the ABA has a model rule
- They are generally consistent and similar
- They provide one way to look at the impact of AI in terms of what is expected of lawyers – the rules speak in terms of duties

# Significant Ethics Rules Arizona

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- ER 1.1. Competence
- ER 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer
- ER 1.4. Communication
- ER 1.5. Fees
- ER 1.6. Confidentiality
- ER 1.7 &
  - ER 1.8. Conflict of Interest: Current Clients

# Examples of a of the Few Rules

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- ER 1.1 (Competence) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- ER 1.5 **(a)** (Fees) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following: *(includes a long list of factors)*

# Start with Some Examples

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- Then move to specific effects on lawyers



# AI – Merely a Stochastic Parrot?

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- AI has no wisdom or understanding of what its output is or what it is “saying”
- It uses statistics to determine what words logically comes next in a series of words
- Result can be logical and rational
- BUT meaning can be ridiculous

# Can AI be Trusted – What Can go Wrong?

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- AI – making purchases on the Internet
- AI – inventing claims
- AI – the problem of bias

So ...

## How Does This Really Affect Lawyers?

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- Prior examples give a clue
- Lawyers have already recognized that it is an issue

# Need to understand AI

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- Failure can result in penalties

# Need to Use AI

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- Sanctions for not using AI
- But also need to “supervise” AI
- The hard question: how to do this?

# Need to Communicate to Client About AI

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- Especially when client's data to be used
- But again: communicate exactly what?
  - Communicate that AI can / will be used and what to expect OR
  - Obtain permission to use AI?

# Need to Maintain Confidentiality Client Data

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- Related to the attorney – client privilege (but is much broader)
- Data leaks are the obvious potential problem
- But knottier problems:
  - How is confidentiality protected when data → part of the AI program as it learns
  - Who owns the data when it is used as such
  - Who owns the program after client data is input

# Need to Charge Only a Reasonable Fee

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- Failure to use AI could result in unreasonable fee
- But what is reasonable when AI is used?
- How much cost saving can be allocated to client
- What about the costs of implementing the AI



# The Scope / Definition of the “Practice of Law” may change

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- What is the practice of law
- What is the unauthorized practice of law
- How will this change?
- Lawyers / judges will have more work if pro se (i.e., unrepresented) litigants use AI

# Evidence Issues

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- Danger of deep fakes and similar being used as evidence
- Creation of new legal claims for creating / using deep fakes (in any venue)
- Use of AI to detect lying (perjury)?
  - Accuracy
  - Ethical to use

# Now for Some Good News

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- Judge(s) using AI to obtain better justice
  - US
  - Foreign

# But ... is this Entirely Good News

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- Danger of biases present ab initio being baked into future results
  - If only AI decided the results of cases:
    - Would Brown v. Bd. of Education come out the way it did or would separate but equal still be the law of the land?
    - Or Roe v. Wade?
    - Or Dobbs (the case overturning Roe v. Wade)
- So what does AI passing the ethics exam really tell us
  - It is smarter than attorneys? More ethical?
  - Or is it just better at being a stochastic parrot in correctly regurgitating the rules in a structured (test) environment

# Conclusions

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- Lawyers can't ignore AI
- Lawyers must understand AI
- Lawyers will probably be required to use AI
  - Advantage to big law?
- Lawyers will need to “supervise AI” and its output
  - How?
- AI may require different fee arrangements
- AI will change the nature and functions of lawyers – and non lawyers
- Any changes will affect lawyers and non-lawyers (including clients)